IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Law Society of British Columbia v. Bryfogle,* 2012 BCSC 59

Date: 20120117
Docket: L052318
Registry: Vancouver

Between:

The Law Society of British Columbia

Petitioner

And

R. Charles Bryfogle
personally and doing business as ICU Consultants

Respondent

Before: The Honourable Madam Justice Bruce

Reasons for Judgment

Counsel for the Petitioner:	B. Olthuis M. Kleisinger
R.C. Bryfogle:	Appearing In Person
Place and Date of Hearing:	Vancouver, B.C. November 28-30, 2011
Place and Date of Judgment:	Vancouver, B.C. January 17, 2012

INTRODUCTION

[1] This is an application for an order of contempt against Mr. Bryfogle brought by the Law Society of British Columbia. The Law Society alleges that Mr. Bryfogle knowingly and intentionally violated an order of Mr. Justice Groberman pronounced on June 9, 2006 and entered on June 19, 2006 ("the Order"), which Order was issued in connection with the within proceedings: *Law Society of B.C. v. Bryfogle*, 2006 BCSC 1092; upheld on appeal: 2007 BCCA 511.

[2] The Law Society commenced a petition seeking various orders to restrain Mr. Bryfogle from unlawfully engaging in the practice of law and to prevent him from acting on his own behalf or on behalf of others in litigation without leave of the court. Mr. Bryfogle is not and never has been a member in good standing of the Law Society. Mr. Justice Groberman (as he then was) heard the petition in May 2006 and pronounced judgment on June 9, 2006. Groberman J. concluded that on several occasions Mr. Bryfogle had engaged in the practice of law contrary to the *Legal Profession Act,* S.B.C. 1998, c. 9. The Order enjoined Mr. Bryfogle from engaging in the unauthorized practice of law as follows:

> ...R. Charles Bryfogle, until such time as he becomes a member in good standing of the Law Society of British Columbia, be prohibited and enjoined from:
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> (a) appearing as counsel or advocate;
>
> (b) drawing, revising or settling a document for use in a proceeding, judicial or extra-judicial;
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> (c) drawing, revising or settling a will, deed of settlement, trust deed, power of attorney or a document relating to probate or letters of administration or the estate of a deceased person;
>
> (d) drawing, revising or settling a document relating in any way to proceedings under a statute of Canada or British Columbia;
>
> (e) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages;
>
> (f) giving legal advice;
>
> (g) offering to or holding himself out in any way as being qualified or entitled to provide to a person the legal services set out in (a) through (f) above,
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> for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed;

> [R. Charles Bryfogle] be prohibited and enjoined from commencing, prosecuting or defending a proceeding in any court in his own name or in the name of another person, without leave of the court, other than representing himself as an individual party to a proceeding acting without counsel solely on his own behalf;
>
> ...
>
> [R. Charles Bryfogle] be required to inform the General Counsel of the Law Society of any proceeding or legal matter in which he is involved in any manner whatsoever, other than representing himself as an individual party to a proceeding acting without counsel solely on his own behalf.

[3] The Law Society's application for an order of contempt against Mr. Bryfogle specifies that Mr. Bryfogle commenced, prosecuted or defended proceedings without leave of the court and failed to inform the General Counsel of the Law Society of his involvement in the proceedings or legal matters in four separate actions commenced in this court: (1) Holland v. James et al, Penticton Registry No. 30011, involving a motor vehicle accident in which Ms. Holland, then Mr. Bryfogle's spouse, is the claimant; (2) Holland v. HMTQ et al, Williams Lake Registry No. 07-16199, and the appeal, Court of Appeal Registry No. CA36717 involving Ms. Holland's action against several defendants for mercury poisoning due to dental work; (3) Bryfogle v. Bryfogle et al, Prince George Registry No. 1036556, involving an action by Ms. Holland for damages for slander and defamation against members of Mr. Bryfogle's family; and (4) Holland v. Marshall et al, Penticton Registry No. 26039 and four appeals, Court of Appeal Registry Nos. CA034582, CA035819, CA035990, and CA36649. In addition, the Law Society claims that Mr. Bryfogle failed to notify it of his involvement in the creation of a trust document dated October 24, 2007.

[4] The Law Society seeks an order of committal, a fine, or both and, in the alternative, a warrant directed to the Sheriff requiring Mr. Bryfogle to be apprehended and brought before the court for his contempt. Mr. Bryfogle appeared in person at the hearing of this contempt application pursuant to an order of Justice Wong dated June 28, 2011. Pursuant to that order, the Law Society was required to pay to Mr. Bryfogle in advance of the hearing, conduct money according to sections 2 and 3 of Schedule 3 of Appendix C to the *Supreme Court Civil Rules*, B.C. Reg.

168/2009. Mr. Bryfogle confirmed that the Law Society had paid the required conduct money at the commencement of the hearing.

[5] During the hearing, Mr. Bryfogle was cross-examined on his affidavits with leave of the court primarily because during submissions Mr. Bryfogle purported to introduce additional evidence not contained in his affidavit material. In addition, the court granted leave to Mr. Bryfogle to call Ms. Holland as a witness. The Law Society was permitted to cross-examine Ms. Holland.

[6] At the commencement of the hearing, Mr. Bryfogle acknowledged that he was bound by the Order and that he had knowledge of the Order and its terms. The issues addressed at the hearing were as follows:

1. Whether the Law Society had proven beyond a reasonable doubt that Mr. Bryfogle violated the terms of the Order by prosecuting a proceeding without leave of the court and whether the Law Society had proven beyond a reasonable doubt that Mr. Bryfogle had failed to inform the Law Society of his involvement in legal proceedings or matters.

2. Whether the Law Society had proven beyond a reasonable doubt that Mr. Bryfogle deliberately or intentionally engaged in conduct that violated the terms of the Order.

[7] Mr. Bryfogle's defence to the contempt application was essentially twofold: (1) the limited assistance he provided to Ms. Holland in the four legal proceedings described above did not constitute prosecution of an action contrary to the Order; and (2) at the time Mr. Bryfogle engaged in the conduct alleged to constitute a violation of the Order, he was unaware that his actions breached the terms of the Order. Thus he did not intentionally violate the terms of the Order.

[8] Mr. Bryfogle also filed a constitutional argument with regard to s. 15 of the *Legal Profession Act* alleging that if the Law Society claimed that communications between husband and wife concerning litigation or the law in general were

prohibited, this provision must be unconstitutional as a violation of the freedom of speech. He conceded, however, that the Law Society was not taking this position and thus his constitutional argument was not relevant to the application for contempt.

MATERIAL FACTS

1. Holland v. James et al

[9] On February 28, 2006, Ms. Holland brought a notice of claim in provincial court with respect to a motor vehicle accident and she was represented by counsel. Acting in person, Ms. Holland transferred the file to this court on November 23, 2007. Ms. Holland met Mr. Bryfogle in or about December 2005 and they married in August 2007. During the early part of 2008, ICBC's counsel and Ms. Holland filed several cross applications that culminated in a hearing before Beames J. in Penticton on May 13 and 14, 2008. Mr. Bryfogle attended the hearing and conferred with Ms. Holland during the proceedings. On May 28, 2008, Beames J. issued oral reasons addressing the format and content of the statement of claim, the lists of documents served by Ms. Holland, and both parties' demands for the production of documents.

[10] On June 5, 2008, Ms. Holland filed a notice of motion in the action addressing her examination for discovery. Thereafter Mr. Bryfogle swore a series of affidavits that were filed in the action in support of Ms. Holland's motion. While the first affidavit merely attached documents without further comment, affidavits dated July 7 and 14, 2008, contained argument in support of various aspects of Ms. Holland's litigation. Mr. Bryfogle argued that the evidence to date revealed that counsel for ICBC may be acting in bad faith and engaging in an abuse of process; that ICBC or a physician had suppressed evidence; that the statement of defence was without merit and should be dismissed under Rule 19(24); and that opposing counsel is seeking to delay and hinder the case on its way to trial. In the July 14, 2008 affidavit, Mr. Bryfogle deposed that he had read the clinical notes of Dr. Paisley and other documents produced by ICBC and argued that the existence of missing pages was

proof of wilful suppression of evidence by opposing counsel. To support this argument, Mr. Bryfogle referred to his 30 years' experience as a forensic auditor and fraud investigator. On August 6, 2008, Ms. Holland filed a new notice of motion for an order that ICBC was in contempt for failing to produce all relevant documents and, alternatively, an order that ICBC suppressed evidence. In support of this motion, Ms. Holland indicated that she would be relying on Mr. Bryfogle's first three affidavits in the series.

[11] On September 3, 2008, Ms. Holland attended a pre-trial conference before Rogers J. Mr. Bryfogle was present in the courtroom. Ms. Holland attempted to file a fourth affidavit signed by Mr. Bryfogle on September 2, 2008. This affidavit contained argument in regard to a notice of motion filed by ICBC; and an assertion that ICBC's counsel had harassed a witness to the accident in breach of professional conduct rules. Mr. Bryfogle also indicated that he read Ms. Holland's emails about the litigation and communicated directly with opposing counsel on her behalf. Mr. Justice Rogers refused to accept Mr. Bryfogle's affidavit and says at page 7 of the transcript:

> ...I'm aware of the injunction against Mr. Bryfogle from appearing or giving legal advice in matters, and so I am very reluctant to accept anything from him, ... And in any event, I am not really going to do ... deal with anything substantive, today.
>
> ...
>
> Ms. Holland you just keep those in your pocket. I am frankly not going to pay any attention to what Mr. Bryfogle might have to say. As far as I am concerned, he is bound by an injunction preventing him from representing anything in this court.

[12] After acceding to Ms. Holland's request that he examine Mr. Bryfogle's affidavit, Rogers J. says after quoting from the affidavit:

> ... But clearly Mr. Bryfogle is attempting to give Ms. Holland legal advice about the consequences and the fact of compliance or non-compliance with the Rules of Court. Therefore that affidavit is out.

[13] On September 8, 2008, Ms. Holland filed a new notice of motion for an order that ICBC be held accountable for harassing a witness to the accident. The remedy sought is the dismissal of ICBC's statement of defence. In support of this motion,

Ms. Holland relied upon Mr. Bryfogle's affidavit #4 dated September 2, 2008. On September 29, 2008, Mr. Bryfogle swore another affidavit that contains argument in support of a dismissal of ICBC's statement of defence due to witness harassment as well as argument in regard to independent medical examinations pursuant to Rule 30. On the same date, Mr. Bryfogle swore another affidavit acknowledging that he was present for the pre-trial conference with Rogers J. In this affidavit Mr. Bryfogle argues that the Order did not preclude him from preparing and executing affidavits and he confirmed that he was acting as a paralegal for Ms. Holland without expectation of remuneration.

[14] At no time did Mr. Bryfogle notify the Law Society of his involvement in Ms. Holland's action.

2. Holland v. HMTQ et al

[15] On July 25, 2007, Ms. Holland filed a statement of claim in the above action against the Provincial government and various bodies associated with the Ministry of Health and the Ministry of the Environment, the Federal government, the Federal Minister of Health, Health Canada, the American Dental Association, the Canadian Dental Association and the BC Dental Association. This action concerns, among other allegations, an assertion that Ms. Holland suffered from mercury poisoning due to certain dental work (the "Mercury Action").

[16] It does not appear that Mr. Bryfogle swore any affidavits in support of Ms. Holland's Mercury Action. Instead, Ms. Holland signed all of her own pleadings and submissions. The affidavits filed in support of Ms. Holland's various applications were all signed by Ms. Holland. These affidavits and submissions contained many legal concepts borrowed from American statutes and case authorities. For example, Ms. Holland refers to the RICO statutes, spoliation (which concerns destruction of evidence or suppression of evidence), American case law on the right of commercial free speech, mercury poisoning, government negligence, and negligent advertising. Ms. Holland testified that she wrote these submissions and drafted these affidavits without assistance from Mr. Bryfogle. At most she borrowed his precedents and had

access to a detailed index of his American and Canadian law library. She denied that Mr. Bryfogle carried out any research on her behalf. However, Mr. Bryfogle admitted to providing Ms. Holland with more assistance than she acknowledged. In Mr. Bryfogle's affidavit dated January 29, 2010, filed in the Law Society's contempt application, he admits to the following assistance regarding Ms. Holland's Mercury Action:

> 6. I assisted Ms. Holland by typing her briefs, documents and letters, letting her use my templates, doing legal research. ... Respondent kept Ms. Holland's files and schedule.

[17] While Mr. Bryfogle attempted to modify this statement during cross-examination on the affidavits filed in the Law Society's application, I found his explanation to lack credibility. In my view, Mr. Bryfogle's evidence amounted to a transparent attempt to ensure his version of the events was the same as that provided by Ms. Holland in her evidence. I note that Ms. Holland's evidence was also an attempt to repudiate the admissions made in the affidavits she filed in support of Mr. Bryfogle's defence to the Law Society's application.

[18] The briefs and affidavits filed by Ms. Holland in the Mercury Action are formatted in a manner identical to Mr. Bryfogle's affidavits. Ms. Holland's affidavits and briefs also contain the same type of language used by Mr. Bryfogle and the same legal concepts. Many of his colourful phrases such as "the legal priesthood", "affidavitted", and "proffered" are also found in Ms. Holland's filed materials.

[19] Mr. Bryfogle did not notify the Law Society of his involvement in the Mercury Action.

3. Bryfogle v. Bryfogle et al

[20] On February 18, 2010, Ms. Holland filed this action in her married name against Mr. Bryfogle's two adult children along with their respective mothers. The statement of claim alleges that the defendants engaged in defamation and conspiracy by making false statements to the Ministry of Children and Family Development about Mr. Bryfogle's treatment of his daughter. These statements are

alleged to have caused the termination of Ms. Holland and Mr. Bryfogle's foster care contract with the Ministry. In the statement of claim, Ms. Holland claims damages on her own behalf and on behalf of Mr. Bryfogle. He is not a party to the litigation. The relief claimed also includes a reference to the American legal concept of "light invasion of privacy". The demand for Interrogatories served on the defendants is signed by Ms. Holland; however, the questions posed are almost entirely concerned with the defendants' actions towards Mr. Bryfogle. Ms. Holland's correspondence with opposing counsel is in the same strident and caustic style used by Mr. Bryfogle in his correspondence with opposing counsel in other actions. Her correspondence also uses similar language to Mr. Bryfogle's common parlance such as "proffer".

[21] Mr. Bryfogle also filed affidavits in connection with Ms. Holland's action for defamation. On January 5, 2011, Mr. Bryfogle swore an affidavit that contained submissions regarding service of documents on the defendants and their constructive notice of the pleadings and other materials filed in connection with the action. Mr. Bryfogle argued the defendants had avoided service and thus an order for substitutional service should be granted. Ms. Holland relied on this affidavit in support of her application for an order to serve the defendants substitutionally.

[22] On January 31, 2011, Cole J. heard Ms. Holland's application for an order for substitutional service. Counsel for the defendants argued that on the face of the statement of claim Ms. Holland was merely a proxy for Mr. Bryfogle who had been declared a vexatious litigator. In response, Ms. Holland advised the court that Mr. Bryfogle would be considering whether he should be joined as a party to the action.

[23] On February 4, 2011, counsel for the defendants applied for a declaration that Mr. Bryfogle was in violation of the Order and should be found in contempt. This application also contained several requests for orders relevant to Ms. Holland's conduct of the litigation. On February 7, 2011, Ms. Holland filed an amended statement of claim that omitted the relief sought on behalf of Mr. Bryfogle. Thereafter, opposing counsel received correspondence from Mr. Bryfogle that originated from Ms. Holland's email address. Both Mr. Bryfogle and Ms. Holland

acknowledged that they had access to each other's email address and read each other's emails. Mr. Bryfogle indicates in his email that he is acting as Ms. Holland's assistant and is taking direction from her. However, on February 16, 2011, Mr. Bryfogle faxed a letter to opposing counsel indicating that he should have been served with the defendants' motion to have an order of contempt made against him and disclosed that he had read the motion. On February 25, 2011, Mr. Bryfogle sent additional correspondence to opposing counsel concerning the contempt application. His letter also contained an assertion that counsel had violated the order of Cole J. in regard to the service of material on Ms. Holland. It is noteworthy that by February 2011, Mr. Bryfogle and Ms. Holland were separated and living in different areas of B.C. Thus it must be inferred that Ms. Holland provided Mr. Bryfogle with a copy of the motion served on her by opposing counsel.

[24] Ms. Holland's submission in response to the defendants' application dated February 22, 2011, addressed all of the issues raised by the application, including the allegations of contempt against her and Mr. Bryfogle. She also argued that the defendants' application was an abuse of process and alleged wrongdoing by counsel in language reminiscent of Mr. Bryfogle's affidavits in other proceedings commenced by Ms. Holland. The submission is signed by Ms. Holland; however, there is an indication on the final page that it was prepared for her and not authored by her. I am satisfied that it may be inferred from this proviso found in the submission that it was prepared by Mr. Bryfogle. Ms. Holland filed two affidavits sworn by Mr. Bryfogle in support of her submission. Both affidavits, dated February 14 and 18, 2011, contain arguments authored by Mr. Bryfogle in support of Ms. Holland's position that the entire application by the defendants should be dismissed based on improper conduct by the defendants and their counsel.

[25] The contempt applications were adjourned generally and on March 18, 2011, Humphries J. ordered Ms. Holland to pay $5,000 into court as security for costs. Counsel for the defendants, Mr. McLauchlan, described the proceedings before Humphries J. in paragraph 42 of his affidavit dated June 21, 2011, as follows:

> During the course of submissions, I had occasion to observe the Respondent and Zsuzsanna working side by side. When Zsuzsanna stumbled or became confused in argument, the Respondent [Mr. Bryfogle] passed her notes and provided her with direction. I formed the impression that Zsuzsanna was reading from a script. I recall the Respondent making submissions on Zsuzsanna's behalf. I also recall the Respondent attempting to make submissions on his own behalf. These latter submissions were primarily devoted to the issue of costs.

[26] Mr. Bryfogle deposed in his affidavit dated July 18, 2011, filed in the Law Society application, that these statements were untrue and, further, that any statements he made to the court were in regard to costs of the adjourned contempt application against him. I note that Ms. Holland's affidavit dated October 19, 2011, filed in the Law Society application, does not address the above observations of Mr. McLauchlan.

[27] Following the hearing before Humphries J., Mr. Bryfogle again corresponded directly with counsel for the defendants about service of documents and indicated that he was going to file an application to be joined as a party to the action due to the allegations that he was merely hiding behind Ms. Holland by permitting her to bring on the lawsuit. In addition, Mr. Bryfogle corresponded directly with counsel for the defendants chastising him for failing to sign the form of order directed by Humphries J. in regard to Ms. Holland's lawsuit. He threatened to seek costs against counsel for the failure to sign off on the form of order. Before Mr. Bryfogle's application could be set down for hearing, he wrote to counsel for the defendants seeking answers to interrogatories in regard to Ms. Holland's action.

[28] Mr. Bryfogle at no time informed the Law Society of his involvement in this litigation against his family members.

4. Holland v. Marshall Litigation

[29] On January 7, 2005, prior to meeting Mr. Bryfogle, Ms. Holland commenced an action on behalf of her son Jonathon alleging, against multiple parties, acts of negligence at the time of his birth that caused brain injuries, including attention deficit disorder, hyperactivity disorder, and oppositional defiance disorder. This

litigation has a long history. The primary issue has always been whether Ms. Holland, and latterly Mr. Bryfogle, should be permitted to represent Jonathon as litigation guardian and as legal representative. This issue has been addressed, along with a myriad of other issues by this Court and by the Court of Appeal on many occasions. Ms. Holland and Mr. Bryfogle have jointly managed the litigation on behalf of Jonathon as found by the Court of Appeal in *Holland v. Marshall*, 2009 BCCA 582 at para. 3:

> Ms. Holland and Mr. Bryfogle have managed the litigation on the appellant's behalf, and appeared for the appellant in most of the many proceedings in this Court and the Supreme Court of British Columbia. The appellant, who is now 22 years old, has had no direct contact with counsel for the respondents, nor has he appeared in any court proceedings. The appellant's appeal from an order dismissing his action is scheduled for hearing in this Court in February 2010. The trial judge found there was no evidence to legally support the claims that he was brain-injured at birth. Despite being granted many opportunities through case management, adjournments and rehearings, rulings requiring the appellant to be represented by counsel, and suggestions that counsel be retained to assist in obtaining the evidence required to prove his claim, Ms. Holland and Mr. Bryfogle have instead continued to pursue multiple procedural objections and applications.

[30] Mr. Bryfogle's involvement in *Holland v. Marshall* continued after the Order was issued. Ms. Holland filed motions in the Court of Appeal that were to be spoken to by Mr. Bryfogle. Mr. Bryfogle filed numerous affidavits in the Court of Appeal that contained legal submissions in favour of Ms. Holland's various applications and appeals. He acknowledged to the Court of Appeal that he assisted Ms. Holland with the day to day conduct of the litigation in this Court and in the Court of Appeal and had done so since April 2007. He also acknowledged attending court with her on a consistent basis, reading and becoming familiar with all of the pleadings and other documents received from opposing counsel, carrying out legal research on behalf of Ms. Holland, and investigating sources and obtaining evidence in support of Ms. Holland's claims generally and in regard to her allegation of destruction of evidence. Mr. Bryfogle made serious allegations of misconduct by counsel and the defendants. Mr. Bryfogle communicated directly with opposing counsel on legal and procedural issues surrounding the litigation by use of Ms. Holland's email address. In this

correspondence, Mr. Bryfogle acknowledged reading counsel's emails to Ms. Holland and purported to provide her responses.

[31] On March 17, 2008, Mr. Bryfogle filed an affidavit in the *Holland v. Marshall* action responding to, among other issues, opposing counsel's assertions that his involvement in the litigation was improper. He argued in the affidavit that his assistance was not providing legal advice contrary to the Order primarily because no fee was charged for his services. Mr. Bryfogle maintained that he would continue to provide assistance to Ms. Holland in the form of access to his computer file system for pleadings and motions and copies of his U.S. and Canadian case law. He would also continue to assist her by using his experience and knowledge to conduct research about issues Ms. Holland presented to him. Mr. Bryfogle responded to allegations made by opposing counsel that Ms. Holland was a vexatious litigator alleging bad faith, abuse of process, and fabricated allegations. He provided opinion evidence on the law regarding the merits of Ms. Holland's litigation. Ultimately, it was Mr. Bryfogle who crafted the appeal submissions with respect to the dismissal of Ms. Holland's various applications in this Court.

[32] In his various affidavits, Mr. Bryfogle boasted of many years of experience as a forensic investigator, paralegal and legal researcher. He purported to be extremely familiar with U.S. and Canadian legal jurisprudence and cited such law in the form of conclusions and opinions.

[33] In December 2008, Mr. Bryfogle and Ms. Holland jointly brought an application in the Court of Appeal with regard to Constitutional arguments they wished to make in this Court. The legal submission supporting the Constitutional argument was written by Mr. Bryfogle. Mr. Bryfogle and Ms. Holland jointly responded to opposing counsel's submissions concerning their appeal.

[34] It is only at the end of March 2009, that Mr. Bryfogle acknowledged that he must make an application to be heard by the Court of Appeal as a matter of privilege. While he attempted to make the application on March 31, 2009, he had not filed any materials in support of this application. The application material was not

filed until April 7, 2009. On April 14, 2009, Smith J.A. refused to accord standing to Mr. Bryfogle. Nevertheless, on April 24, 2009, Mr. Bryfogle wrote to opposing counsel in the litigation concerning the proceedings before Smith J.A. as follows:

> It has come to my attention you filed a boxcar of documents with Madam Justice Smith. Can I conclude that the documents filed are consistent with the memorandum decision of Madam Justice Saunders? If not, anything not in conformance with Madam Justice Saunders' memorandum decision should be withdrawn. If you do not, we will have the interesting exercise of the court allowing attorneys to breach the rules while compelling non attorneys to comply with the rules. I will not tolerate one set of standards for the legal priesthood and another set of standards for those who have not joined the priesthood.

[35] On May 9, 2009, Smith J.A. adjourned Ms. Holland and Mr. Bryfogle's application for leave to appear as agent for Jonathon. At para. 14 of the judgment reported as *Holland v. Marshall*, 2009 BCCA 199, Smith J.A. says:

> In the motion, Mr. Bryfogle describes himself as the appellant's "stepfather, agent and designated representative." However, Mr. Bryfogle is not a party to the action and, therefore, also lacks standing to appear on the appellant's behalf. More importantly, Mr. Bryfogle is subject to an injunction obtained by the Law Society for British Columbia on June 9, 2006, that prohibits and enjoins him "from commencing, prosecuting or defending a proceeding in any court in his own name or in the name of another, without leave of the court, other [than] in representing himself as an individual party to a proceedings, acting without counsel, solely on his own behalf": 2006 BCSC 1092 (Chambers), application to adduce new evidence and appeal dismissed at 2007 BCCA 511. As well, on April 2, 2007, in another proceeding, Mr. Bryfogle was declared a vexatious litigant and pursuant to s. 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443 and was ordered to obtain leave of the court before he could institute any legal proceeding in any court: 2007 BCSC 457.

[36] Mr. Bryfogle's application for leave to appear on behalf of Jonathon was heard by Neilson J.A. and dismissed: 2009 BCCA 311. It is apparent that Mr. Bryfogle, despite an assertion in the Law Society application that he believed the Order had no force and effect in the Court of Appeal, knew that he was required to apply for the privilege of audience before that court. Mr. Bryfogle filed lengthy submissions addressing this issue that were rejected by Neilson J.A.

[37] Mr. Bryfogle provided the Law Society with notice of his intention to appear before the Court of Appeal in connection with the *Holland v. Marshall* litigation by

letter dated December 4, 2008. He informed the Law Society that the appearance was scheduled for January 7, 2009. While the motion attached to this letter is signed by Mr. Bryfogle as agent for Jonathon, he advised the Law Society that he anticipated counsel, Mr. Hogg, would be representing Jonathon when the action was referred back to this Court. Mr. Bryfogle did not provide any additional notices to the Law Society with regard to his involvement in this litigation.

5. Trust Agreement

[38] On October 24, 2007, Mr. Bryfogle created a trust in which Ms. Holland was the trustee. The declaration of trust refers to Ms. Holland's son Jonathon but he is not a beneficiary per se. The trust agreement is signed by Mr. Bryfogle as creator of the trust and by Ms. Holland as the trustee.

[39] Mr. Bryfogle did not advise the Law Society of this trust agreement or his involvement in the creation of this trust.

ARGUMENT

[40] The Law Society acknowledges that it must prove the contempt beyond a reasonable doubt. Further, the Law Society argues that the test for contempt is described by the Court of Appeal in *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316.

[41] The Law Society argues that Mr. Bryfogle acted in the capacity of solicitor of record for all of the above actions filed in this Court and the subsequent proceedings in the Court of Appeal. Mr. Bryfogle did not merely assist Ms. Holland, he directed her litigation as a solicitor would by drafting pleadings and submissions, corresponding with opposing counsel with regard to procedural and substantive issues, managing and reviewing all incoming documents and other materials relevant to the litigation, providing legal advice, and researching the law. While much of Mr. Bryfogle's assistance was in the form of affidavits filed in the actions, these affidavits contained argument and submissions on the issues raised by Ms. Holland and by opposing counsel. The Law Society also maintains that Ms. Holland's

affidavits and submissions were all drafted by Mr. Bryfogle. This conduct, argues the Law Society, constitutes a violation of the Order. It is irrelevant that Mr. Bryfogle was not paid for his services. In support of this argument, the Law Society relies upon *Law Society of B.C. v. Bryfogle*, 2006 BCSC 1092 at paras. 42-45; and *Law Society of B.C. v. Robbins*, 2011 BCSC 1310.

[42] The Law Society also maintains that Mr. Bryfogle deliberately and intentionally set out to circumvent the Order by assisting Ms. Holland with her litigation in this manner. Mr. Bryfogle ignored attempts by this Court and opposing counsel to bring to his attention the fact that he was in violation of the Order. Instead, Mr. Bryfogle steadfastly ignored warnings and claimed he was doing nothing wrong by giving assistance without remuneration. The Law Society argues Mr. Bryfogle's actions amounted to a calculated scheme to avoid the impact of the injunction on his desire to engage in the practice of law contrary to the Order.

[43] The Law Society argues that Mr. Bryfogle also violated the Order by failing to notify its General Counsel, or any of its staff members, of his involvement in the above litigation except once when he was scheduled to appear in the Court of Appeal in connection with *Holland v. Marshall.* The Law Society maintains the language of the Order was very clear. Any involvement in a legal matter or a proceeding whatsoever triggered an obligation to notify the Law Society.

[44] In regard to sentencing, the Law Society maintains only a committal to prison for a period of 30 days will deter Mr. Bryfogle from breaching the Order in the future. A jail term is necessary to send a message to him about the serious nature of his misconduct and to protect the public from the waste of time and court resources. The Law Society argues this is not a single breach of the Order where an opportunity to purge the contempt may be accorded to Mr. Bryfogle. In support of its position on sentence, the Law Society relies upon *Law Society of B.C. v. Dempsey*, 2007 BCSC 442; *Law Society of B.C. v. McLaughlin* (30 July 1992), Vancouver A861743 (S.C.); *Law Society of B.C. v. McLeod* (17 December 1998), Vancouver

A95228 (S.C.); *Frith v. Frith*, 2008 BCCA 2; and *United Food and Commercial Workers International Union Locals 175 and 633*, [2005] O.J. No. 4140 (S.C.J.).

[45] The Law Society argues a jail term is warranted because the misconduct was a calculated defiance of the Order and because Mr. Bryfogle expressed no remorse. There is also no prospect that he will pay a fine given his failure to pay any of the costs awarded against him to date and due to his assertions that he is without financial means to pay these costs.

[46] The Law Society seeks an order of special costs as the usual order in contempt proceedings: *Law Society of B.C. v. Yehia*, 2008 BCSC 1172.

[47] Mr. Bryfogle argues that the assistance he provided to Ms. Holland does not amount to the "prosecution" of litigation or a legal matter that was prohibited by the Order. While Mr. Bryfogle acknowledges that he cannot prosecute an action for someone else, even where he is not being paid for his services, he argues that helping his spouse with the drafting of pleadings, filing affidavits in support of her claims, organizing her files and managing documents as a secretary would do, is not prohibited by the term "prosecution". Alternatively, Mr. Bryfogle maintains that the broad definition given to the term "prosecution" by the court in *Robbins* was unknown to him and could not retroactively render his actions contemptuous. In this regard, Mr. Bryfogle notes that *Robbins* was issued by this Court in October 2011, long after the misconduct alleged by the Law Society.

[48] Mr. Bryfogle also raises several other defences. First, Mr. Bryfogle maintains he had no notice that the Law Society and others regarded the assistance he provided to Ms. Holland as a breach of the Order. Second, Mr. Bryfogle argues that until he received the Law Society's submission a few days prior to the hearing of this matter, he was completely unaware that the Law Society's contempt application related to that part of the Order prohibiting prosecution of litigation. Instead, Mr. Bryfogle believed the Law Society's complaint concerned the first part of the Order, which prohibited certain legal services for reward. Third, Mr. Bryfogle argued that due to comments by Hall J.A. during a Court of Appeal proceeding to the effect that

the Order did not apply to that court, he believed there was no prohibition against appearances in the court in any capacity. Lastly, Mr. Bryfogle argues that he was only required to give notice to the Law Society if he intended to appear in court to make submissions on behalf of someone else. Mr. Bryfogle says that since the Order he has not made representations to the court on behalf of anyone. Nor has he provided legal services to another for a fee. Thus there was no need to notify the Law Society.

[49] In regard to sentence, Mr. Bryfogle argues that if he is found in contempt of the Order, he is unable to pay a fine given his financial circumstances. Further, he argues that a jail term is not warranted because the violation of the Order was not a conscious one and was not a course of conduct designed to circumvent the Order. He maintains there is no threat of future violations because he and Ms. Holland are divorced now and he is getting too old to provide competent legal services for anyone.

DECISION

[50] The standard of proof in civil contempt proceedings is proof beyond a reasonable doubt. The test, as described by the Court of Appeal in *Sorrenti* at para. 14, is the intentional doing of an act which is prohibited by the Order. Intention means deliberate conduct as opposed to accidental or inadvertent. The intention may be inferred from all of the circumstances. There is no requirement to show public defiance.

[51] The starting point in this inquiry is the terms of the Order. Groberman J. clearly prohibited Mr. Bryfogle from acting contrary to both s. 15(1) of the *Legal Profession Act* and s. 15(5) of the *Act*. While the Order prohibited certain types of acts that constitute the practice of law provided the services were rendered for a fee or reward, the Order also prohibited certain conduct absolutely regardless of whether Mr. Bryfogle was paid or had any expectation of reward for his services. The terms of this aspect of the Order were discussed at paras. 39 and 42-45 of the judgment as follows:

> [39] The second order will be start in the terms sought in the petition: "The respondent is prohibited and enjoined from commencing, prosecuting or defending a proceeding in any court in his own name or in the name of another person without leave of the court". The following words will be added, however, to paragraph 2: "other than in representing himself as an individual party to a proceeding, acting without counsel, solely on his own behalf." Thus, Mr. Bryfogle will be entitled to act in court on his own behalf where he is an individual party to a proceeding. He will not be entitled, however, to act for others.
>
> ...
>
> [42] In granting this order, I recognize that there is, apparently, some debate as to whether s. 15(5) of the *Legal Profession Act* prohibits a person from commencing, prosecuting or defending a proceeding as an agent for another person if the person acting is not being paid for that service.
>
> [43] In *Yal v. Minister of Forests*, 2004 BCSC 1253, Halfyard J. appears to have assumed that s. 15(5) does extend that far. More recently, in *Law Society of B.C. v. Dempsey*, 2005 BCSC 1277, Williams J. appears to suggest that it does not.
>
> [44] In my view, the language of s. 15(5) is broad enough to prohibit a person from acting on behalf of another in commencing, prosecuting, or defending a proceeding. A person purporting to perform those acts as an agent for another is, in my view, "acting in the name of another person." I do not see that anything in s. 15(5) purports to qualify the phrase, "in the name of another person," by suggesting that it really means "in the name of another person, but for the benefit of the person who is acting." Accordingly, to the extent that Williams J.'s reasons may be seen as giving a restrictive interpretation to s. 15(5), I am in respectful disagreement and prefer the interpretation of the section given by Mr. Justice Halfyard.
>
> [45] In the result, I am satisfied that s. 85 of the *Legal Profession Act* is sufficient authority to grant the relief that I have thus far referred to.

[52] Although it is clear from the above passages that the Order was intended to prohibit "prosecution" of litigation without expectation of fee or rewards, there is no discussion of what is meant by the term "prosecution". Indeed, it was likely unnecessary to embark upon such an inquiry because there was overwhelming evidence that Mr. Bryfogle had been practising law, giving legal advice, and appearing in court as an advocate for others and charging for his services.

[53] In *Robbins*, Grauer J. had occasion to review the case authorities addressing the meaning of s. 15 of the *Legal Profession Act.* Resorting to the historical development of this section of the *Act* to resolve apparent inconsistencies in the

interpretation of the current s. 15, Grauer J. summarized the conduct he included within the term "prosecution" at para. 38 of the judgment:

> [38] It follows that if a person in the position of Mr. Robbins does nothing more than assist a party by appearing to speak on his or her behalf at a hearing for free, then he is not practising law and the Law Society is in no position to intervene. That person will be subject only to the court's overriding discretion, in the case of persons who are neither litigants nor lawyers, to grant or withhold a right of audience. Where, however, a person takes in hand not only advocacy or assisting in the drawing of a document, but also the overall prosecution or defence of a proceeding, as a solicitor was wont to do, then he is practising law, or at least contravening section 15(5), and the Law Society may intervene.

[54] In my view, Grauer J.'s interpretation of s. 15 of the *Act* in *Robbins* is correct. It properly explains the interplay between s. 15(1) of the *Act*, which prohibits acts of advocacy that constitute the practice of law when rendered for a fee and s. 15(5) of the *Act*, which prohibits the conduct of a solicitor's practice by a layperson even where no fee is charged. See: *Robbins* at para. 37.

[55] Applying this concept of the term "prosecution" to the facts of this case, I find there is overwhelming evidence that, since the pronouncement of the Order, Mr. Bryfogle has taken on, if not the overall direction of Ms. Holland's various civil actions, a joint prosecution and defence of those actions on her behalf. While Mr. Bryfogle argues that filing affidavits in support of Ms. Holland's claims in response to the applications of opposing counsel is not prohibited by the Order, his affidavits do not merely provide evidence in support of Ms. Holland's case. Mr. Bryfogle's affidavits are submissions of law and legal opinion dressed up in the format of an affidavit. Mr. Bryfogle uses the vehicle of an affidavit to make accusations of bad faith and abuse of process against the opposing parties and their counsel, to argue for dismissal of the defendants' statements of defence as frivolous and vexatious, and to argue both the merits and the procedural aspects of Ms. Holland's numerous claims.

[56] Ms. Holland signs the pleadings in her actions and the notices of motion she files. However, even where Ms. Holland's name appears on a document, its language and format have the distinct mark of Mr. Bryfogle's colourful prose. In my

view, it is an inescapable conclusion that Mr. Bryfogle has been a major contributor to documents Ms. Holland has filed under her name in all of the proceedings described in this complaint.

[57] However, Mr. Bryfogle's representation of Ms. Holland goes far beyond creating affidavit submissions that she is able to present to the court. He also communicates directly with opposing counsel on behalf of Ms. Holland and addresses such matters as the procedural requirements of service, production of documents, compliance with court orders, allegations of suppressing evidence, and improper conduct by counsel and parties. These are matters that go well beyond the functions of a legal secretary or assistant.

[58] It is apparent that Mr. Bryfogle types and reviews all of the legal documents produced by Ms. Holland and carries out legal research on aspects of the law that she has no apparent knowledge of. Mr. Bryfogle also gathers evidence for Ms. Holland in the same manner as a solicitor of record would gather evidence for a client. He is acutely aware of every document that has been served on Ms. Holland and which she has served on opposing counsel and the defendants. He discusses these documents with opposing counsel and refers to them in his submission affidavits.

[59] Moreover, Mr. Bryfogle attends court with Ms. Holland on a regular basis and during the proceedings gives her advice and counsel. Mr. Bryfogle takes notes of court proceedings, which are subsequently used in his affidavits submissions. Although providing this service to his spouse does not, standing alone, constitute prosecution of litigation within the meaning of s. 15(5) of the *Act*, it is the totality of Mr. Bryfogle's actions that constitutes the acts prohibited by this provision.

[60] In at least one action, *Bryfogle v. Bryfogle*, it is clear that Ms. Holland was a proxy for a claim that should rightfully have been filed by the spouses jointly. Indeed, Ms. Holland's original statement of claim expressly acknowledged that Mr. Bryfogle was harmed by the acts alleged to have been committed by the defendants due to her claim for damages on his behalf. Her subsequent advice to Cole J. that Mr.

Bryfogle may apply to be joined as a party to the action is further evidence that he was the driving force behind this litigation.

[61] The action itself essentially concerns slanderous statements made by the defendants that caused economic harm to Mr. Bryfogle and only incidentally to Ms. Holland due to her association with Mr. Bryfogle. As in the earlier actions filed by Ms. Holland, Mr. Bryfogle swore affidavits that contained submissions of law and legal opinions about the merits of the action and the defence. He communicated directly with opposing counsel on procedural and substantive issues and he appeared in court as Ms. Holland's confidant and advisor as he had in the other actions.

[62] Both Ms. Holland and Mr. Bryfogle attempted to downplay the assistance he provided to her during these various legal proceedings. I found both these individuals to be disingenuous witnesses. They attempted to retract clear admissions in the affidavits filed in this complaint without providing plausible explanations. Ms. Holland was clearly an advocate for her now ex-husband and did not testify as a disinterested third party.

[63] Neither of these individuals was able to give reliable evidence of their actions or words. Mr. Bryfogle, in particular, advised the court that until the Law Society served him with their legal submission he failed to appreciate their case was based on the fact that he had prosecuted actions on behalf of Ms. Holland and not on evidence that he accepted a fee for legal services. This statement, however, was completely false. The transcript of the proceedings before Wong J. to address preliminary motions brought by Mr. Bryfogle in this complaint clearly revealed that by June 28, 2011, he was well aware of the nature of the Law Society's complaint. Mr. Bryfogle described the Law Society's complaint to Mr. Justice Wong as follows:

> ... What we're here for today is that -- and it may well get resolved -- when I saw the new application I finally figured out I believe what the Law Society is trying to say. If I had violated Mr. Justice Groberman's order by going out and getting a pay from somebody, a third party, for legal work, I would be in gross violation of the order. What I have instead is I have -- without noticing the Law Society -- I have 1,000 -- 10,000 times given legal advice. I have assisted my wife because I have 30 years of legal experience. I have helped briefs, I have

> helped her do briefs. I have edited her pleadings. But they're always signed by her.

[64] Mr. Bryfogle and Ms. Holland also testified that Hall J.A. pronounced a ruling that rendered the Order ineffective in the Court of Appeal. They both used the ruling of Hall J.A. as justifications for Mr. Bryfogle's appearances in that court after the Order was pronounced. Ms. Holland was unable to provide any details of when or in what context Hall J.A.'s ruling was made. It was only at the conclusion of the hearing that Mr. Bryfogle recalled that the ruling was made during the appeal of Meiklem J.'s decision in *Bryfogle v. School District No. 49 et al*, 2007 BCSC 457, wherein he was found to be a vexatious litigator. In this context, it is quite apparent that Hall J.A. meant that Mr. Bryfogle could prosecute his own appeals without contravening the Order. However, throughout the proceedings, Ms. Holland and Mr. Bryfogle incorrectly led this Court to believe that Hall J.A. ruled on the matter and found that the Order had no application at all to proceedings in the Court of Appeal.

[65] It is also apparent that, except on one occasion, Mr. Bryfogle has failed to notify the Law Society through its General Counsel, or through any other member of its staff, that he is involved in litigation and other legal matters. The language of the Order is very clear; the obligation to inform arises whenever Mr. Bryfogle becomes involved in litigation or other legal matters <u>in any manner whatsoever.</u> Mr. Bryfogle admits that he had knowledge of the Order and its terms. Mr. Bryfogle's involvement in the creation of the trust agreement and his involvement in all of the litigation described above clearly and unequivocally gave rise to an obligation to notify the Law Society and he has failed to do so on many occasions since the pronouncement of the Order.

[66] In summary, I find it is beyond a reasonable doubt that Mr. Bryfogle breached the terms of the Order by prosecuting litigation on behalf of Ms. Holland and by failing to notify the Law Society of his involvement in this litigation and the trust agreement.

[67] The question remains whether the Law Society has proven beyond a reasonable doubt that Mr. Bryfogle intentionally violated the Order. While it may well be that Mr. Bryfogle innocently misunderstood Hall J.A.'s reference to the application of the Order in the Court of Appeal, there can be no doubt that he understood the Order prohibited him from appearing in this Court. Thus any defence to this complaint based on comments by Hall J.A. concerning the application of the Order could only be confined to proceedings in the Court of Appeal. Even this proposition is not entirely true as Mr. Bryfogle's only notice to the Law Society concerned an appearance he intended to make in the Court of Appeal.

[68] Further, I find no merit in Mr. Bryfogle's assertion that he was unaware that the Law Society believed he was acting in contravention of the Order. Mr. Bryfogle must have been cognizant of the ruling by Rogers J. on September 3, 2008, that his affidavits could not be filed in support of Ms. Holland's motions in the *Holland v. James* action due to the terms of the Order. Mr. Bryfogle was present in the courtroom during these proceedings. Moreover, Mr. Bryfogle swore an affidavit in the same proceeding on September 29, 2008, which contained criticism of the ruling of Rogers J. and argument on the proper interpretation of the Order. Thereafter Mr. Bryfogle continued to file the same type of legal submissions dressed up as affidavits on behalf of Ms. Holland in other proceedings. In addition, prior to the ruling of Rogers J., opposing counsel in the *Holland v. James* matter brought to Mr. Bryfogle's attention his apparent violation of the Order and Mr. Bryfogle was aware that the Law Society had been contacted about this matter by counsel.

[69] The propriety of Mr. Bryfogle's actions was brought to his attention again in the spring of 2009 when the Law Society first served notice of this complaint. Nevertheless, Mr. Bryfogle maintained what he was doing was in compliance with the Order because he was not accepting a fee or reward from Ms. Holland. The issue came to a head in the *Bryfogle v. Bryfogle* action where opposing counsel attempted to set down a motion to have Mr. Bryfogle's involvement in this litigation declared contemptuous of the Order. Not only did Mr. Bryfogle's involvement in the action escalate in response to the allegation of contempt, but he continued to act in

the capacity of solicitor of record for Ms. Holland by addressing with the court and with opposing counsel substantive and procedural issues arising out of her claim and her defence to the defendants' applications.

[70] While I am satisfied beyond a reasonable doubt that Mr. Bryfogle was acutely aware that the assistance he was providing to Ms. Holland was regarded as a violation of the Order by both the Law Society and opposing counsel in the various actions, it is argued that the language used in the Order does not make it clear what is meant by the term prosecution. Mr. Bryfogle argues that until *Robbins* there were no clear parameters defining when providing legal assistance becomes prosecution.

[71] The Law Society argues that the meaning of prosecution in s. 15(5) has always been clear. The only real dispute has been whether prosecution without reward was caught by the legislation. In my view, however, Grauer J., in *Robbins*, identified ambiguity in the interplay between prohibited acts by a layperson that were acceptable if not for reward and acts that were prohibited absolutely whether or not the layperson was paid. He addressed not only the aspect of remuneration but also the distinction between the prosecution of a case and practising law as that is defined by the *Legal Profession Act.* Grauer J. referred to the faulty drafting of this legislation and said at para. 37 of *Robbins*:

> [37] In my view, that historical distinction is important to the interpretation of these provisions and helps clarify the confusion to which the inelegance of the drafting has given rise. It provides the key to understanding the difference between "appearing as counsel or advocate" and other actions included in the definition of "practice of law" if done for a fee, on the one hand, and the reference in section 15(5) to commencing, prosecuting or defending a proceeding, on the other. The former, particularly including the barrister's work of appearing at a hearing as advocate for a party, do not constitute the practice of law if done for free. The latter, incorporating the litigation solicitor's practice of commencing, prosecuting and defending a proceeding, does, whether done for a fee or not. This distinction survives today in the use of the terms "solicitor" or "solicitor of record" to designate the lawyer or firm responsible for the conduct of the litigation on behalf of the party in question, and the term "counsel" to designate the lawyer who will actually appear in court on behalf of that party. The two may but need not be the same individual.

[72] Given Grauer J.'s comments about the ambiguity in the legislation, it may be understandable that a layperson like Mr. Bryfogle, who is invariably self-represented, would not fully appreciate what acts constituted prosecution in the context of s. 15(5) of the *Act*. Mr. Bryfogle's confusion about the Law Society's position is evident in his submissions addressing allegations of contempt that arose in the context of Ms. Holland's various civil actions and in the context of the Law Society's complaint. In these submissions Mr. Bryfogle focused on the issue of reward or remuneration for legal services rather than on a characterization of his actions as outside the definition of "prosecution".

[73] As described above, there is no doubt that Mr. Bryfogle knew the Law Society regarded his involvement in Ms. Holland's litigation as a breach of the Order. However, the Law Society did not correspond with Mr. Bryfogle to identify precisely what it regarded as "prosecution" in violation of the Order and demand that he cease and desist. Further, although the Law Society's complaint was originally filed in the spring of 2009, the matter was not set down for hearing and the subject complaint was not filed until June 23, 2011. It was not until the June 28, 2011 proceedings before Wong J. that Mr. Bryfogle demonstrated he understood the Law Society's position. All of the acts made the subject of this complaint occurred prior to that date.

[74] There is no doubt that my suspicions are raised about Mr. Bryfogle's understanding of what it meant to prosecute an action on behalf of Ms. Holland in breach of the Order. In light of the contempt application filed by opposing counsel in Ms. Holland's litigation, one would have thought the prudent course of action would be to seek clarification from the Law Society or the court as to what precisely was meant by "prosecuting" litigation.

[75] Further, it may be reasonable to draw an inference of knowledge that his actions violated the Order from Mr. Bryfogle's practice of including legal argument in affidavits. On the surface these affidavits are a colourable attempt to disguise the true nature of the assistance he was providing Ms. Holland. However, it is also equally reasonable to infer that Mr. Bryfogle failed to appreciate the difference

between evidence that may properly be included in an affidavit and legal argument which should not form part of an affidavit. While Mr. Bryfogle boasts substantial knowledge of the law, even a cursory examination of his affidavits and submissions illustrates that his understanding of Canadian law and legal process is woefully inadequate. Numerous judges of this Court and the Court of Appeal have commented on the serious problems created by Mr. Bryfogle's incompetence as a legal advocate. There is also no evidence to suggest that Mr. Bryfogle's practice of including legal argument and opinion in his affidavits only began after the Order was pronounced.

[76] Lastly, it is suspicious that Mr. Bryfogle used Ms. Holland as a proxy to commence an action against his family members for defamation; however, the decision to do so was likely to avoid the impact of the vexatious litigator order imposed by Meiklem J. When Ms. Holland commenced *Bryfogle v. Bryfogle*, she was not yet subject to a vexatious litigator order. Mr. Bryfogle's compliance with the order of Meiklem J. is not before me.

[77] In summary, while there is evidence from which the Court may infer that Mr. Bryfogle deliberately violated the Order with knowledge that his actions constituted "prosecution" of litigation, I have a reasonable doubt about this issue.

[78] I am satisfied beyond a reasonable doubt that Mr. Bryfogle intentionally violated the Order by failing to notify the Law Society of his involvement in Ms. Holland's various actions. While Mr. Bryfogle may have been unaware that his actions constituted "prosecution", he could not have been mistaken about the duty to report his actions to the Law Society. Any involvement whatsoever must be reported to the Law Society. There is no qualification as to the extent or nature of his involvement. Mr. Bryfogle was clearly aware of the obligation to notify the Law Society even when his participation in an action was minimal. Indeed, he notified the Law Society of an appearance in the Court of Appeal in January 2009 in connection with the *Holland v. Marshall* litigation. The notice indicated that his involvement would be nominal as it was expected that legal counsel would be acting for Jonathon

when the matter was referred back to this Court. Mr. Bryfogle argued that the Law Society never took any steps to warn him about becoming involved in an action without complying with the notification requirement in the Order. However, unless opposing counsel brought the matter to the attention of the Law Society, it would only be through notification by Mr. Bryfogle that the Law Society would become aware of his actions or his intention to become involved in litigation. This was obviously the intention behind the notification term of the Order.

[79] Accordingly, I find Mr. Bryfogle guilty of civil contempt by failing to notify General Counsel of the Law Society of his involvement in the four actions described in the Notice: *Holland v. James et al*, *Holland v. HMTQ et al*, *Holland v. Marshall*, and *Bryfogle v. Bryfogle et al*. I also find Mr. Bryfogle guilty of contempt by failing to notify the General Counsel of the Law Society of the trust agreement dated October 24, 2007, in which he is named as the "creator".

[80] Turning to the appropriate sentence, the following factors are relevant to punishment for civil contempt:

1. the gravity of the offence;
2. the need to deter the offender;
3. the past record and character of the offender and, in particular, whether this is a first offence;
4. the need to protect the public from the offender's misconduct;
5. the extent to which the offender is able to pay a monetary penalty; and
6. the extent to which the breach was flagrant and wilful and intended to defy the court's authority.

[81] Conduct that threatens the proper administration of justice is particularly grave and clearly aggravates the offender's contempt: *Majormaki Holdings LLP v. Wong*, 2009 BCCA 349 at para. 25.

[82] Applying these factors to Mr. Bryfogle's case, I find the failure to notify the Law Society of his involvement in Ms. Holland's litigation on numerous occasions is a serious violation of the Order. His failure to comply with the Order effectively insulated his actions from the Law Society's supervision. The Law Society was forced to rely upon reports from opposing counsel concerning Mr. Bryfogle's involvement in litigation. These reports would necessarily be after the fact. By failing to notify the Law Society himself, Mr. Bryfogle precluded the Law Society from taking proactive steps to prevent him from carrying out his intentions. Due to the large number of civil actions Ms. Holland commenced between 2007 and 2010, the Law Society could not reasonably be expected to monitor Mr. Bryfogle's involvement in the litigation without timely and adequate notification by Mr. Bryfogle.

[83] Although this is the first order of contempt against Mr. Bryfogle, the numerous violations of the Order over a period of four years further aggravate his misconduct. There is also a need to protect the public and the integrity of the justice system by the sentence imposed. Mr. Bryfogle's involvement in Ms. Holland's litigation has caused considerable problems and unnecessary expense. Mr. Bryfogle consistently attacks opposing counsel with unfounded assertions of professional misconduct; he causes a considerable waste of public monies by supplying Ms. Holland with legal arguments that are bound to fail; and his lack of competence in legal process and advocacy have led to numerous costs awards that he and Ms. Holland are unable to pay. He is quite simply a menace to the justice system.

[84] The need to deter Mr. Bryfogle to ensure future compliance with the Order is somewhat minimized by the fact that both Mr. Bryfogle and Ms. Holland have been declared vexatious litigators and must obtain the consent of the court to commence an action. Mr. Bryfogle also points to his divorce from Ms. Holland and his advanced age as substantial impediments to his continued involvement in her lawsuits. However, Mr. Bryfogle has completely ignored the statements of this Court and the Court of Appeal with regard to his incompetence as a legal advocate. He still has a substantial library of Canadian and American law and has always been very keen to

share his wealth of experience and legal knowledge with others. Thus future compliance with the Order remains a real and substantial concern.

[85] Mr. Bryfogle did express some conditional remorse at the hearing of the contempt application. While vehemently denying any merit to the Law Society's claims, in the event the court found him guilty of contempt, Mr. Bryfogle apologized for his errors. I find it difficult to accept that Mr. Bryfogle is sincere about his apology in light of his transparent attempt to mislead the court about his involvement in Ms. Holland's litigation during the Law Society's cross-examination.

[86] Balancing the factors outlined above, I find that a jail term is not necessary to denounce Mr. Bryfogle's misconduct or to ensure future compliance with the Order. Further, a fine is not a suitable sentence due to Mr. Bryfogle's inability to pay it. The appropriate sentence, in my view, is to bind Mr. Bryfogle to a recognizance in the amount of $5,000, without deposit or surety, for a period of one year. The conditions of the recognizance are as follows:

1. You will keep the peace and be of good behaviour.

2. You will report to a probation officer at The Moose Hall, 272 Highway 20, Bella Coola on January 18, 2012, and thereafter you will report as directed by your probation officer, but at least once each week by telephone.

3. You will provide your probation officer with your current address and telephone number and you will advise him or her of any changes in your address or telephone number forthwith.

4. You will have no communications, directly or indirectly, with Zsuzsanna Holland concerning any of the proceedings that she currently or in future may have in any court in this province.

5. You will provide your probation officer with a copy of the entered order in this proceeding on your first day of reporting or within 48 hours of

receiving same from counsel for the Law Society, whichever occurs first, and you shall also provide your probation officer with a copy of the Order of Groberman J. in *Law Society of B.C. v. Bryfogle*, 2006 BCSC 1092 on your first day of reporting.

6. You shall not enter any courthouse in the province of British Columbia except if you are charged with an offence and must attend court for matters related to this offence or if you have the prior written permission of your probation officer to do so. You may not file any document in any court registry in British Columbia without the prior written permission of your probation officer, except if you are charged with an offence and must file a document in connection with the offence.

[87] Counsel for the Law Society shall draft the order and Mr. Bryfogle's signature as to form is dispensed with. Counsel for the Law Society shall serve Mr. Bryfogle with an entered copy of the order by faxing it to the number that Mr. Bryfogle has provided the registry.

[88] Mr. Bryfogle is bound by this order from today forward whether or not he has received the entered order from the Law Society. I remind Mr. Bryfogle that this order is in addition to and not in substitution for any other court orders that bind him. In particular, Mr. Bryfogle remains bound by the Order of Groberman J. dated June 9, 2006.

[89] The Law Society seeks to amend the Order of Groberman J. to reflect the changes in its organization since 2006. Because the Law Society no longer has a General Counsel, it seeks an amendment to reflect that Mr. Bryfogle must notify the "Unauthorized Practice Committee" of any involvement in litigation or legal matters. Mr. Bryfogle does not oppose this amendment. Thus the amended provision of the Order shall read:

> R. Charles Bryfogle be required to inform the Unauthorized Practice Committee of the Law Society of BC of any proceeding or legal matter in

which he is involved in any manner whatsoever, other than representing himself as an individual party to a proceeding acting without counsel solely on his own behalf.

[90] Having found Mr. Bryfogle in contempt of the Order, the Law Society is entitled to special costs as the usual order: *Law Society of B.C. v. Yehia* at para. 59.

"Bruce J."